

**INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY  
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009  
SECTION 1602 TAX CREDIT EXCHANGE PROGRAM  
LOAN AGREEMENT**

**Borrower's D-U-N-S # \_\_\_\_\_**

THIS LOAN AGREEMENT ("Agreement"), effective as of the \_\_\_ day of \_\_\_\_\_, 20\_\_, is made by and between the **INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY**, a public body corporate and politic of the State of Indiana ("Lender" or "IHCD"), as administrator of the American Recovery and Reinvestment Act of 2009 (the "ARRA") Section 1602 Tax Credit Exchange program, and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of Indiana ("Borrower").

**RECITALS:**

**WHEREAS**, Borrower has applied to Lender for a loan of Section 1602 Program funds to be secured by a mortgage on the Property (as hereinafter defined) of even date herewith as evidenced by Borrower's promissory note (the "Note") in the aggregate principal amount of \_\_\_\_\_ **and** \_\_\_/100 **Dollars (\$\_\_\_\_\_.)** (the "Loan Amount");

**NOW THEREFORE**, in consideration of the making of the Loan and the following mutual promises, covenants and conditions, the sufficiency of which is hereby acknowledged, the parties hereby covenant, agree, warrant and represent as follows:

**PART ONE**  
**DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings set forth opposite each. Any capitalized words and phrases not defined below shall have the same meaning as set forth in the ARRA Section 1602 Program Policies and Procedures issued by Lender (the "Policies and Procedures"), 2009-2010 Qualified Allocation Plan of Lender (the "QAP") and the United States Department of the Treasury's Grantee Terms and Conditions (the "Grantee Terms and Conditions"), as amended from time to time.

1.01 "Application": Any and all documents submitted by Borrower to Lender in consideration of the Loan; together with any and all exhibits, policies, manuals, statutes, rules, regulations, or any other documents referenced therein.

1.02 ["Asset Management Agreement": The asset management agreement executed subsequently hereto by Borrower, Lender and \_\_\_\_\_ (the "FSA") pursuant to which the FSA agrees to perform certain asset management services for Borrower on behalf of Lender.]

["Cooperation Agreement": The cooperation agreement executed subsequently hereto by Borrower and Lender pursuant to which Borrower agrees to provide certain information to Lender.]

1.03 ["Asset Management Fee": The fee payable by Borrower to the FSA pursuant to the Asset Management Agreement.]

1.04 “Compliance Period”: The fifteen (15) year Compliance Period with respect to the Property as defined in Section 42(i)(1) of the Internal Revenue Code.

1.05 “Conversion Date”: The earlier of (a) December 1, 2011 and (b) the date the Project is put into service pursuant to Section 42 of the Internal Revenue Code.

1.06 “Development Services Agreement”: The development services agreement executed subsequently here to by Borrower and the developer of the Project.

1.07 “Draw Request”: Borrower’s request for disbursement of Loan proceeds pursuant to Part 7 and the form that must be used for that purpose, which shall be available at [www.ihcdaonline.com](http://www.ihcdaonline.com).

1.08 “Governing Instruments”: (a) The articles or certificates of incorporation or organization of Borrower organized as a corporation, limited liability company, or partnership, all amendments thereto, the by-laws, operating agreement, partnership agreement and resolutions, duly adopted by the board of directors, members or partners (as applicable) approving the Loan and the execution and delivery of the Loan Documents; and, (b) such instruments, agreements and certificates as Lender may request with respect to Borrower if Borrower is an entity other than a corporation, limited liability company or partnership.

1.09 “Governmental Authority”: The United States of America, the State of Indiana, the county, township and/or municipality in which the Property or any portion thereof is located, any political subdivision of any of them, and any court, agency, department, commission, board, bureau or instrumentality of any of them.

1.10 “Guarantors”: \_\_\_\_\_. Each Guarantor’s liability shall be subject to the terms and conditions of the respective Guaranty of Completion or Recapture Guaranty to which it is a party.

1.11 “Guaranties”: The Guaranty of Completion and Recapture Guaranty.

1.12 “Guaranty of Completion”: That certain guaranty of lien-free completion of the Project executed by a Guarantor.

1.13 “Improvements”: The improvements to the Property, as more particularly described in the Plans.

1.14 “Lien and Extended Use Agreement”: The lien and extended use agreement executed subsequently hereto by Borrower in favor of Lender as required by Section 42 of the Internal Revenue Code.

1.15 “Loan”: The loan consummated of even date herewith from Lender to Borrower, in the Loan Amount.

1.16 “Loan Documents”: This Agreement, the Note, the Mortgage, the Security Agreement, the Lien and Extended Use Agreement, **[the Asset Management Agreement] [the Cooperation Agreement]**, the Uniform Commercial Code financing statements and the Application executed in connection with the Loan, and all affidavits, certifications, and other documents and instruments delivered to or required by Lender to evidence or secure the Loan.

1.17 “Manager”: \_\_\_\_\_.

1.18 “Monetary Default”: Shall have the meaning assigned to it in Section 8.01(a).

1.19 “Mortgage”: The mortgage to be executed subsequently hereto by Borrower in favor of Lender granting Lender a mortgage interest in the Property.

1.20 “Non-Monetary Default”: Shall have the meaning assigned to it in Section 8.01(b).

1.21 “Plans”: All final drawings, plans and specifications prepared by Borrower and approved by Lender which describe and show the physical details of the Improvements including labor, materials, equipment, fixtures and furnishings necessary for the construction of the Improvements (and also showing minimum site and grade of finishes and furnishings) and all amendments and modifications thereof approved in writing by Lender.

1.22 “Property”: The parcel or parcels of land described more particularly in Exhibit “A”, attached, and all real and personal Property now owned or hereafter acquired by Borrower and covered, from time to time, by the Mortgage.

1.23 “Recapture Guaranty”: That certain guaranty of Borrower’s obligations upon recapture of Loan proceeds in accordance with the Section 1602 Program, executed by a Guarantor.

1.24 “Security Agreement”: The security agreement to be executed subsequently hereto by Borrower in favor of Lender granting Lender a security interest in all assets of Borrower.

1.25 “Section 1602 Program”: The program administered by Lender pursuant to Section 1602 of the ARRA, which includes Section 42 of the Internal Revenue Code, the QAP, the Policies and Procedures and all notices, guidance, regulations and rulings issued by the United States Department of the Treasury or Lender.

1.26 “Stabilization”: Shall have the meaning assigned to it in the Policies and Procedures.

1.27 “Title Insurer” means the issuer(s), approved by Lender, of the Title Policy.

## PART TWO LOAN AND LOAN DOCUMENTS

2.01 The Loan. Subject to all the terms, conditions, and provisions hereof, Lender hereby agrees to lend to Borrower, and Borrower hereby agrees to borrow from Lender, the Loan Amount or so much as may be advanced from time to time until the Conversion Date, together with all costs and charges that may become due and owing under any of the Loan Documents, to be used solely for the purpose of \_\_\_\_\_ (the “Project”). The Loan is being provided to the Borrower in exchange for, among other consideration, the completion of the Project and the return of Borrower’s per capita credits.

The Loan shall be used exclusively by Borrower to further the purposes of the ARRA, including, without limitation: (a) to preserve and create jobs and promote economic recovery; (b) to assist those most impacted by the recession; (c) to provide investments needed to increase economic efficiency by spurring technological advances in science and health; (d) to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and (e) to stabilize state and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.

2.02 Relationship of Loan and Various Documents. The Loan is evidenced by the Note, and repayment of the Note and all other sums due Lender under the terms of any of the Loan Documents is secured by the Mortgage, and any other security or collateral given to Lender in connection with the Loan from time to time.

PART THREE  
CONDITIONS PRECEDENT

3.01 General Description of Conditions. Lender shall not be obligated to make any advance under the Loan until the following conditions shall have been satisfied:

- (a) Lender shall have received and approved the items specified in Section 3.02; and
- (b) The representations and warranties made in Part IV shall be true and correct on and as of the date of the advance with the same effect as if made on such date.

3.02 Specific Required Submittals. To the extent required by Lender, the items to be received and approved by Lender prior to the initial advance and each subsequent advance of the Loan shall be:

- (a) The policies of insurance and the endorsements thereto required pursuant to the terms of the Mortgage (together with evidence of the payment of the premiums therefor);
- (b) The executed Loan Documents (as required by Lender) relating to the Property and any other property given as security for the Loan;
- (c) Paid title insurance policy or a commitment for the same (the "Title Policy"), in the amount of the Note, in form approved by Lender, issued by the Title Insurer, insuring the Mortgage to be a valid lien on Borrower's fee simple and leasehold interest in the Property free and clear of all defects and encumbrances except those previously approved by Lender, with the endorsements required by Lender;
- (d) A minimum standard detail survey (the "Survey") (current to within thirty (30) days of the initial advance) of the Property certified to Lender and the Title Insurer showing and containing:
  - (i) The location of the perimeter of the Property by courses and distances;
  - (ii) all easements, rights-of-way and utility lines referred to in the Title Policy which actually service or cross the Property with recordation detail;
  - (iii) the lines of the streets abutting the Property and the designation of width thereof, and any established building lines;
  - (iv) encroachments and the extent thereof upon the Property;
  - (v) the location of all of the Improvements on the Property and the relationship of said Improvements by distances to the perimeter of the Property, established building lines and street lines;
  - (vi) if the Property is described as being on a filed map, a legend relating the Survey to said map;

- (vii) the full legal description of the Property, identical to that contained in the Title Policy;
- (viii) all appurtenant and servient easements with recordation detail;
- (ix) the number of acres contained in the Property;
- (x) all other exceptions referenced in the Title Policy with recordation detail;
- (xi) the location of all railroad tracks and sidings, rubbish fills, sloughs, springs, filled in wells or cisterns and seepholes; and
- (xii) an affirmative certification as to whether or not any portion of the Property is located in a flood hazard area and a certification as to the zoning of the Property.

The Survey shall be updated and/or recertified to within thirty (30) days after completion of the Improvements to constitute a final "as built" ALTA minimum standard detail survey. The Survey shall have a Minimum Standards Detail Certificate attached and shall run to the benefit of Lender and the Title Insurer, and the Survey form shall in all respects be satisfactory to Lender and the Title Insurer.

(e) Copies of the applicable ordinances and, if required by law, a recorded copy of the plat of the Property, certified by an appropriate official (as determined by Lender) to be complete and accurate;

**(f) [An appraisal approved in writing by Lender.] [ONLY WHERE REQUIRED BY SENIOR LENDER]**

(g) A copy of the building permit and/or improvement location permit issued by the applicable Governmental Authority for construction of the Improvements for the Project as well as evidence to the effect that, upon completion of construction: (i) the Project will comply with applicable zoning ordinances and regulations, deed and land use restrictions and all other governmental requirements such as building permits, improvement location permits, sanitary sewer connection permits, curb cut permits, driveway permits and storm service permits; (ii) all roads and utilities necessary for the full utilization of the Property and the Project for their intended purposes have been or will be completed; and (iii) the Improvements to be located on the Property will not violate any easements and that any action permitted pursuant to any easement by any holder of an easement will not materially interfere with the operation of the Property and Improvements or cause material damage to the Property and the Improvements; (iv) all costs for approvals from Governmental Authorities have been paid; and (v) the Improvements are or will be in place on the Property in accordance with the Plans;

(h) Copy of the Plans, which shall include, to the extent applicable, architectural drawings, structural drawings, mechanical drawings, electrical and plumbing drawings, landscape drawings and the applicable specifications for the foregoing;

(i) Copies of all inspection and test records and reports made by or for Borrower, including, without limitation, a Phase I Environmental Site Report;

(j) Copies of any and all authorizations including plot plan and subdivision approvals, zoning variances, sewer, building and other permits required by Governmental Authorities for the construction, use, occupancy and operation of the Improvements or Property for the purposes contemplated herein in accordance with all applicable building, environmental, ecological, landmark, subdivision and zoning codes, laws and regulations;

(k) Evidence that gas, electric power, sanitary and storm sewer, telephone and water facilities and any other necessary utilities are available to service the Improvements and Property in adequate capacities and that the same shall enter the Property through public rights-of-way or private, recorded easements subject to Lender's review and approval;

(l) An executed copy of all construction or management contracts, leases and/or letters of intent regarding rental, and all other contracts relating to the construction, use, occupancy and operation of the Property;

(m) An executed Development Services Agreement approved by Lender, pursuant to which the developer of the Project shall agree to maintain a retention account for the developer fee in accordance with the Policies and Procedures;

(n) a fully executed **[and fully funded Asset Management Agreement with a financial services agent approved by Lender] [Cooperation Agreement]**;

(o) For each Guarantor, a copy of his most recent annual tax return;

(p) An executed AIA Form G702, G703 or equivalent document;

(q) An executed Guaranty of Completion, Guaranty of Payment and Personal Guaranty; and

(r) Resolutions for each Guarantor authorizing the execution and delivery of each Guaranty to which each respective Guarantor is a party, and of all documents evidencing other necessary corporate action, if any, with respect to each such Guaranty.

3.03 Accounts. On or before the closing of the Loan, Borrower shall establish the account(s) set forth below (each individually an "Account" and collectively, the "Accounts") with a third party approved or required by Lender. Borrower shall fund the Accounts at the levels indicated below.

(a) Accounts:

(i) Operating Reserve Account:

(1) Funding: As of Stabilization, the balance in the Operating Reserve Account shall be at least \$\_\_\_\_\_ (the "Required Minimum Balance").

(2) Use/Disbursement: Funds in the Operating Reserve Account may only be used by Borrower to cover the Project's operating deficits. Lender's prior written consent is required for any disbursements (A) if the balance in the Operating Reserve Account is below the Required Minimum Balance; or (B) if the disbursement would cause the balance of the Operating Reserve Account to fall below the Required Minimum Balance. If Lender's approval is required for such disbursement, then Borrower shall make written request for such approval,

in form acceptable to Lender. Any such withdrawal approval request shall specifically itemize the operating expense(s) which the disbursement is expected to fund and shall include supporting documentation evidencing the Borrower's actual cost for each such operating expense(s). Lender shall approve disbursement to Borrower of such sums from the Operating Reserve Account to cover those operating expenses approved by Lender, in its sole and reasonable discretion. Lender, at Lender's discretion, may make disbursement directly to or direct that such disbursement be made directly to the contractor/vendor.

(3) **Replenishment:** If at any time the balance in the Operating Reserve Account is less than the Required Minimum Balance, then Borrower shall make deposits to replenish the Operating Reserve Account to the Required Minimum Balance as cash flow permits. Notwithstanding any other definition of "cash flow" used herein or used by Borrower, Borrower shall replenish the Operating Reserve Account (or any other Account required to be replenished) prior to making disbursements or any other payments to Borrower, its partners, members or shareholders or to any other affiliate of Borrower, its partners, members or shareholders or to any party related to Borrower, its partners, members, shareholders or affiliated parties.

(ii) **[Lease-Up Reserve Account:**

(1) **Funding:** Sixty (60) days prior to construction completion, Borrower shall deposit into the Lease-up Reserve Account the amount of \$\_\_\_\_\_. Borrower shall notify the management company in writing that the funds are available for use.

(2) **Use/Disbursement:** Funds in the Lease-up Reserve may only be used by Borrower and the Project's property management company to pay operating expenses during the initial lease-up period. When the Project reaches 93% occupancy, any funds remaining in the Lease-up Reserve Account shall be transferred into the Operating Reserve Account or such other reserve account as may be approved by Lender.

(iii) **Replacement Reserve Account:**

(1) **Funding:** Each year during the term of the Loan, Borrower shall deposit into the Replacement Reserve Account the "Annual Replacement Reserve Deposit" as defined herein. The "Annual Replacement Reserve Deposit" is \$\_\_\_\_\_ per unit for the first year and shall be increased by \_\_ percent (\_\_%) annually each year thereafter. The Annual Replacement Reserve Deposit shall be paid in monthly installments equal to one-twelfth (1/12) of the sum necessary for Borrower to reach the Annual Replacement Reserve Deposit requirement for such year on the first day of each month beginning the first month after Stabilization.

(2) **Use/Disbursement:** Funds in the Replacement Reserve Account may only be used as needed to cover the Project's capital improvement needs. Lender's prior written approval is required for any disbursement from the Replacement Reserve Account. Borrower shall make written request for such approval, in form acceptable to Lender. Any such

**withdrawal approval request shall specifically itemize the capital improvements needed and shall include supporting documentation evidencing the Borrower's actual cost for each such capital need. Lender shall approve disbursement to Borrower of such sums from the Replacement Reserve Account for such capital improvement(s) approved by Lender, in its sole and reasonable discretion. Lender, at Lender's discretion may require that disbursement be made directly to the contractor. Lender consent shall not be required to approve disbursements from the Replacement Reserve Account for the cost of routine maintenance to the Project. At Lender's request, Borrower shall obtain lien waivers and/or releases from any contractor providing labor and/or materials to the Project for which a disbursement has been made. [USE ONLY WHERE THERE IS NO EQUITY INVESTOR]**

**PART FOUR**  
**REPRESENTATIONS AND WARRANTIES**

Borrower hereby represents and warrants to Lender as follows, each representation and warranty being reaffirmed as true and complete on each submission of a request for advancement and on each receipt of Loan proceeds:

4.01 Organization and Authority of Borrower. Borrower is duly organized, validly existing and in good standing under all applicable laws of the State of Indiana. Borrower has the power, authority, and legal right to carry on its business and engage in the transactions contemplated by the Loan Documents. The execution and delivery of the Loan Documents and the performance and observance of their provisions have been duly authorized by all necessary actions.

4.02 Execution and Delivery of Loan Documents. The execution and delivery of the Loan Documents executed or delivered, or to be executed or delivered, by Borrower and the consummation of the transactions contemplated thereby: (a) shall be and have been duly authorized by all actions required under the terms and provisions of its Governing Instruments, the laws of the State of Indiana and any applicable requirement of a Governmental Authority; (b) create legal, valid and binding obligations on Borrower enforceable in accordance with their terms; (c) do not require the approval or consent of any Governmental Authority having jurisdiction over Borrower or the Property; (d) do not and will not constitute a violation of, or default under, the Governing Instruments of Borrower or any requirement of a Governmental Authority applicable to Borrower; (e) will not be in contravention of any court or administrative order or ruling applicable to Borrower, or the Property, or any mortgage, indenture, security agreement, agreement, commitment or instrument to which Borrower is a party or by which it or its assets are bound; and (f) will not create or cause to be created any mortgage, lien, encumbrance, or charge against the assets of Borrower, other than those permitted by the Loan Documents.

4.03 Information Supplied by Borrower. Borrower's Application, financial statements and all other information heretofore delivered to Lender are true and correct in all respects, and fairly present the respective conditions of the subjects thereof as of the respective dates thereof. No materially adverse change has occurred in the conditions reflected therein since the respective dates thereof and no borrowings, guaranties, or granting of security interests have been made by Borrower since the date thereof other than the borrowings contemplated hereby or approved in writing by Lender.

4.04 No Proceedings. There are no actions, suits or proceedings pending, or, to the knowledge of Borrower, threatened, against or affecting Borrower, or other collateral covered by the Loan Documents, or involving the validity or enforceability of the Loan Documents or the priority of the lien



created or to be created thereby, at law or in equity, or before or by any Governmental Authority. Borrower agrees that it will immediately notify Lender of any such actions.

4.05 Approval of Property; Compliance with Laws. The Property and the Plans have been submitted to and approved by Borrower, Lender, and, to the extent required by applicable law or any restrictive covenant, each Governmental Authority and the beneficiaries of each such covenant, respectively. The anticipated use of the Property complies with all applicable zoning ordinances, regulations and restrictive covenants affecting the Property and Improvements and all other requirements of any Governmental Authority, including but not limited to any and all applicable rules and regulations regarding Section 1602 Program funds, and all requirements for such use have been satisfied.

4.06 Licenses; Permits. Borrower has obtained from each Governmental Authority and from each beneficiary of each restrictive covenant all licenses, permits, authorizations, consents and approvals necessary for the development of the Property and the operation thereof for its anticipated use, and all such licenses, permits, authorizations, consents and approvals are currently and at all times shall be in full force and effect. The operation of the Property will not violate (i) any zoning, building code, subdivision, or land use ordinance, regulation or law promulgated by any Governmental Authority, or (ii) any restriction of any kind affecting the Property.

4.07 Taxes and Fees. Neither Borrower nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, Borrower agrees that any payments in arrears and currently due to the State of Indiana may be withheld from disbursements due to Borrower. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until Borrower is current in its payments and has submitted proof of such payment to Lender.

4.08 No Defaults. Borrower is not in default under any of the Loan Documents, and no event has occurred which by notice, the passage of time or otherwise would constitute a default under any of the Loan Documents; Borrower is not in default in the payment of any indebtedness for borrowed money or under the terms and provisions of any agreement or instrument evidencing any such indebtedness; and Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any other requirement of a Governmental Authority.

4.09 Access and Utilities. The Property has adequate rights of access to public ways and utilities and, if applicable, all wells, septic, water, sanitary sewer and storm drain facilities. All other utilities and services necessary or convenient to the full development, use and enjoyment of the Property are available to the Property.

4.10 Valid Title. Borrower (a) is the true, sole and lawful owner of the Property serving as collateral for the Loan; (b) is lawfully seized and possessed of the same and has full power and lawful authority to mortgage and grant liens upon the same; and (c) the Mortgage, when properly filed and recorded, will create a valid lien on the Property.

4.11 Restrictive Covenant. Borrower shall not subject the Property or any part thereof to any restrictive covenant (including any restriction or exclusive use provision in any lease or other occupancy agreement) without the prior written consent of Lender.

4.12 Environmental.

(a) There are no existing or pending requirements of Governmental Authorities relating to environmental matters requiring any remedial actions or other work, repairs,

construction or capital expenditures with respect to the Property nor has Borrower received any notice of any of the same.

(b) There is no fact pertaining to the physical condition of either the Property, or the area surrounding the Property (i) which Borrower has not disclosed to Lender in writing prior to the date of this Agreement, and (ii) which adversely affects or will adversely affect the Property or the use, enjoyment or the value thereof, or Borrower's ability to perform the transactions contemplated by this Agreement.

4.13 Use of Proceeds. The proceeds of the Loan will only be used directly for the development, construction and/or rehabilitation of the Property.

4.14 Complete Information. No representation or warranty of Borrower contained in any of the Loan Documents, and no statement contained in any certificate, schedule, list, financial statement or other instrument furnished to Lender by or on behalf of Borrower contains, or will contain, any untrue statement of a material fact, or omits, or will omit, to state a material fact necessary to make the statements contained herein or therein not misleading.

4.15 Guarantor Authority. The execution, delivery and performance by each Guarantor of the Guaranties to which each respective Guarantor is a party is within each such Guarantor's powers, has been duly authorized by all necessary action, does not contravene (a) such Guarantor's organizational documents or (b) law or any material contractual restriction binding on or affecting such Guarantor, and does not result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of its properties.

Each of the foregoing representations and warranties shall survive the making of the Loan and each advance hereunder and thereunder, and the Borrower hereby agrees to indemnify and hold harmless the Lender from and against any loss, damage or liability attributable to the breach thereof, including all expenses and fees (including, but not limited to, attorneys' fees) incurred in the defense or settlement of any claim arising therefrom against the Lender.

## PART FIVE AFFIRMATIVE COVENANTS OF BORROWER

5.01 Affirmative Covenants. Borrower agrees that until payment in full of all amounts due and owing under the Note and the full performance of Borrower's other obligations under the Loan Documents, unless otherwise consented to in writing by the Lender, that:

(a) Payment of Taxes. Borrower shall promptly pay and discharge all taxes, assessments and governmental charges which may be lawfully levied, imposed or assessed upon Borrower or its properties and assets, the Property or upon Borrower's income or profits when they shall become due and payable; provided, however, that Borrower shall have the right to contest in good faith any such tax, assessment, charge or levy by appropriate proceedings.

(b) Title to and Maintenance of Property.

(i) Maintenance and Use of Property. Borrower shall maintain, preserve and keep the Property, and each and every part and parcel thereof, and all other collateral covered by the Loan Documents in good repair and safe condition at all times. The Property must meet the stricter of local rehabilitation standards or the Indiana State Building Code throughout the affordability period set forth in the Application. Without

limiting the foregoing, other than routine maintenance of the Property, Borrower shall not without Lender's prior written approval (1) remodel, add to, reconstruct, improve or demolish any part of the Property or other collateral covered by the Loan Documents, except as contemplated by and in accordance with the Plans; (2) permit the use or operation of the Property for any purpose except the use which is intended by the Loan Documents; or (3) undertake or suffer any work to be done upon the Property, other than the work approved in advance by Lender.

(ii) Title to Collateral. Borrower shall not permit any mortgages, liens, encumbrances or charges upon the Property, Improvements, any other collateral covered by the Loan Documents or any part thereof, except as permitted by the Loan Documents or as approved by the Lender in writing.

(iii) Notice of Liens. Borrower shall notify Lender in writing within ten (10) days thereof should any mortgage, lien, encumbrance or charge or any other security instrument whatsoever be filed against the Property or other collateral covered by the Loan Documents, or should same otherwise come to Borrower's attention.

(iv) Insurance. Borrower shall procure and maintain or cause to be procured and maintained all insurance coverage as required by the Mortgage and the Policies and Procedures. Lender shall be named as an additional insured under such insurance coverages.

(c) Inspection, Audits and Information Regarding Property and Loan.

(i) Inspection. Borrower shall permit Lender and its duly authorized agents free access to the Property and shall make available for audit and inspection by Lender, the United States Department of the Treasury, or their duly authorized agents, from time to time at any reasonable time, all Property, equipment, books, contracts, records, detailed plans, specifications and other papers relating to the Property or other collateral covered by the Loan Documents. Borrower shall keep the books and accounts of all operations relating to the Property at its principal office. Borrower shall promptly respond to any inquiry from Lender for information with respect to the Property, which information is subject to verification by Lender; provided, however, that Lender shall at all times be entitled to rely upon any statements or representations made by Borrower or any officer or representative thereof. Any action, inspection, review, recommendation, approval or other activity taken by or on behalf of the Lender does not expressly or impliedly, directly or indirectly, suggest, represent or warrant that the Borrower is in compliance with applicable statutes, rules, regulations, the Application or the Section 1602 Program. Rather, the Borrower acknowledges that it is solely responsible for all such matters.

(ii) Maintenance of Records. Borrower shall maintain books, records, documents and other evidence pertaining to the Property and all costs and expenses incurred and revenues received under this Agreement in sufficient detail to reflect all activities undertaken in connection with the Property and all costs, direct and indirect, of labor, materials, equipment, supplies, services, and other costs of whatever nature. Such records shall be maintained for five (5) years after the end of the Compliance Period. Records shall be retained beyond the prescribed period if any litigation, claim, negotiation, audit, or other action is begun involving this Agreement. In that instance, the records shall be retained until the litigation, claim, negotiation, audit, or other action has

been finally resolved. Records covering displacement and acquisition must be retained for not less than five (5) years after the date by which all persons displaced and all persons whose Property is acquired pursuant to this Agreement have received the final payment to which they are entitled under 24 CFR 92.508.

(d) Transfer of Interests in Borrower or Property. Borrower shall not, without Lender's prior written consent, transfer, convey, sell or assign the Property or any collateral covered by the Loan Documents or any interest therein or part thereof, except for replacement of personal property in the ordinary course of business.

(e) Pay Liabilities. Borrower shall pay when due all liabilities, except for such liabilities as are contested in good faith.

(f) Good Standing. Borrower shall maintain its company existence in good standing in each state in which it conducts business unless failure to maintain its company existence in good standing would not have a material adverse effect on Borrower.

(g) Acknowledgement. The Borrower has signed an "Acknowledgement" as part of its Application. The Acknowledgement, and the representations and warranties contained therein, are hereby reaffirmed, incorporated herein, and made a part hereof by reference. Borrower shall conform to all other requirements of the Section 1602 Program during this Agreement and the entire Compliance Period

(h) Notice of Default or Changed Circumstance. Borrower shall notify Lender in writing within ten (10) days thereof (i) in the event of any default by Borrower under any of the Loan Documents; (ii) if any representation contained herein becomes materially incorrect; and (iii) if Borrower receives any notice(s) from a Governmental Authority concerning the Property.

(i) Deadlines for Use of Funds. Borrower shall draw and expend one hundred percent (100%) of the Loan Amount by December 31, 2011.

(j) QAP Compliance. The Project shall continue to meet the QAP's Criteria for Approval at all times during the term of the Loan.

(k) Section 42 Provisions. Borrower hereby expressly and unconditionally waives the qualified contract provisions contained in Section 42 of the Internal Revenue Code.

(l) Equal Opportunity and Fair Housing. Borrowers of Section 1602 Program funds must comply with all Federal fair housing laws and regulations, including affirmative marketing and anti-discrimination policies. In addition, Borrowers must make a documented effort to solicit minority contractors and subcontractors for any work that will be contracted.

(m) Ethical Requirements. Borrower and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with Lender, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If Borrower is not familiar with these ethical requirements, Borrower should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If Borrower or its agents violate any applicable ethical standards, Lender may, in its sole discretion, begin the appropriate administrative proceeding to terminate this Agreement. In addition, Borrower may be subject to penalties under Indiana Code § 4-2-6-12.

(n) Non-Discrimination.

(i) Pursuant to Indiana Code § 22-9-1-10, Borrower shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment because of race, age, color, religion, sex, disability, national origin, ancestry, or status as a veteran. Borrower understands that Lender is a recipient of federal funds.

(ii) Borrower further agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination in Employment Act of 1975 (42 U.S.C. § 6101 et seq.), the Drug Abuse Prevention and Treatment Amendments of 1978 (21 U.S.C. § 1101 et seq.), the Public Health Service Act of 1944 (42 U.S.C. §§ 290dd through 290dd-2), and all other non-discrimination regulations of the United States Government to ensure that no person shall, on the grounds of race, age, color, religion, sex, disability, national origin, ancestry, or status as a veteran, be excluded from participating in or denied the benefit of Borrower's services, or otherwise be subjected to discrimination under any program or activity for which Borrower receives, directly or indirectly, federal or state financial assistance, and Borrower agrees to immediately take measures to effectuate this provision.

(o) Non-Religious Activities. Borrower agrees that activities conducted with funding obtained through this Agreement shall be non-sectarian in nature and that religious activities shall not be included in any activities to be conducted hereunder.

(p) Drug-Free Workplace Policy.

(i) Borrower hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Borrower will give written notice to Lender within ten (10) days after receiving actual notice that an employee has been convicted of a criminal drug violation occurring in Borrower's workplace.

(ii) False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the contract or Agreement and/or debarment of Borrower from doing further business with the State of Indiana for a period of up to three (3) years.

(iii) In addition to the provisions of Section 5.01(p)(i) above, if the total contract amount set forth in this Agreement is in excess of \$25,000.00, Borrower hereby further agrees that this Agreement is expressly subject to the terms, conditions and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all grants from Lender in excess of \$25,000.00. No award of a contract or grant shall be made, and no contract, purchase order, or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has

been fully executed by Borrower and made a part of this Agreement as part of the grant documents.

Borrower certifies and agrees that it will provide a drug-free workplace by:

(1) Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Borrower's workplace and specifying the actions that will be taken against employees for violations of such prohibition.

(2) Establishing a drug-free awareness program to inform employees of (A) the dangers of drug abuse in the workplace; (B) Borrower's policy of maintaining a drug-free workplace; (C) any available drug counseling, rehabilitation, and employee assistance programs, and (D) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace.

(3) Notifying all employees in the statement required by subparagraph (p)(2) above that as a condition of continued employment the employee will (A) abide by the terms of the statement; and (B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

(4) Notifying in writing Lender and the Indiana Department of Administration within ten (10) days after receiving notice from an employee under subparagraph (3) above, or otherwise receiving actual notice of such conviction.

(5) Within thirty (30) days after receiving notice of a conviction under subparagraph (3) above, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (a) take appropriate personnel action against the employee, up to and including termination; or (b) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purpose by a federal, state, or local health, law enforcement, or other appropriate agency.

(6) Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (1) through (5) above.

(q) Lobbying Activities.

(i) Pursuant to 31 U.S.C. § 1352, and any regulations promulgated thereunder, Borrower hereby assures that no federally appropriated funds have been paid, or will be paid, by or on behalf of Borrower, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(ii) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or

an employee of a member of Congress in connection with this Agreement, Borrower shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying." If Borrower is required to submit Standard Form-LLL, the form and instructions for preparation of the form may be obtained from Lender.

(iii) The foregoing certification is a material representation of fact upon which reliance was or will be placed when entering into this Agreement and any transactions with Lender. Submission of this certification is a prerequisite for making or entering into any transaction as imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(r) Federal Participation. Pursuant to Pub. L. 103-333, 108 Stat. 2573, when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing the activities funded through this Agreement, Borrower shall clearly state:

(i) The percentage of the total costs of the program or project which will be financed with federal funds;

(ii) The dollar amount of federal funds for the project or program; and

(iii) The percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

(s) Operation of Project. Borrower shall operate the Project during the Compliance Period in accordance with all applicable laws, the Section 1602 Program and the Loan Documents. Borrower understands, acknowledges and agrees that any failure to so operate the Project shall constitute a Non-Monetary Default under this Agreement for which Lender may pursue all rights and remedies under Section 8.02(b) of this Agreement.

## PART SIX NEGATIVE COVENANTS OF BORROWER

6.01 Negative Covenants. In addition, Borrower agrees that until satisfaction in full of all amounts due and owing under the Note and the full performance of Borrower's other obligations under the Loan Documents, unless otherwise consented to in writing by the Lender, that it will not:

(a) dissolve or enter into any consolidation or merger with any other corporation or entity or sell or lease all or any substantial part of its property other than in the ordinary course of business;

(b) use any funds borrowed hereunder for any purpose other than as set forth in this Agreement;

(c) sell, transfer, or otherwise dispose of or lease the Property or any part thereof or any other properties, other than as set forth in the Loan Documents;

(d) place, suffer or permit the presence of any hazardous or toxic substance at, on, under, within or about the Property or any portion thereof, except in compliance with applicable law;

(e) use any portion of the Loan for any casino or other gambling establishment, aquarium, zoo, golf course or swimming pool; or

(f) use any portion of the Loan for any type of political or voter activity, or otherwise violate the applicable provisions of the Hatch Act (5 U.S.C. §§ 1501 - 1508 and 7324 – 7326).

## PART SEVEN

### DISBURSEMENT OF LOAN PROCEEDS

Borrower must satisfy all conditions and requirements in this Agreement before Lender has any obligation to disburse any Loan proceeds.

7.01 Method of Disbursement.. The following draw procedures shall apply:

(a) Draw Request. As a condition to any disbursement of Loan proceeds, Borrower shall fully complete, sign, and deliver to Lender a Draw Request. Borrower shall complete the Draw Request online at [www.ichdaonline.com](http://www.ichdaonline.com). Unless otherwise requested by Lender, Borrower shall print and sign the receipt available at such website indicating it has completed the online Draw Request. Borrower shall submit the signed receipt, along with all supporting documentation to Lender at the address set forth in Section 11.

(b) Timing of Final Disbursement. Borrower's final Draw Request shall be submitted to Lender within sixty (60) days after completion of the Project. Borrower's failure to satisfy this requirement shall relieve Lender from making any further disbursement of Loan proceeds, and, notwithstanding any contrary provision contained herein. Lender is not required to give Borrower notice of the breach and an opportunity to cure under this subsection.

7.02 Additional Conditions to Disbursement. In addition to the conditions and requirements in Section 7.01, Lender shall not be obligated to disburse Loan proceeds, unless all of the following conditions are satisfied:

(a) No Defaults. No Monetary Default or Non-Monetary Default exists and no event has occurred or circumstance exists which, with notice and the passage of time (or both), would constitute a Monetary Default or Non-Monetary Default.

(b) No Liens. There are no liens or claims of liens outstanding against the Property, except as otherwise approved by Lender.

(c) Compliance with Requirements. If requested, Borrower has provided Lender with satisfactory evidence of compliance with the Section 1602 Program.

(d) Representations Correct. All representations and warranties made in this Agreement are true and correct on the date of the advance with the same effect as if made on that date; and

(e) Borrower's No Lien Affidavit. If requested, Borrower has provided Lender with an affidavit in a form approved by Lender certifying that there are no liens.



7.03 Final Disbursement. Lender shall make the final disbursement of Loan proceeds (not including retainage) only upon substantial completion of the Work and Lender's receipt of the following:

(a) Completion. Evidence of substantial completion of the Project and a copy of a final or temporary certificate of occupancy for all Improvements from the appropriate Governmental Authority, and copies of any other approvals, licenses, or permits required by the applicable Governmental Authorities for the use of the completed Improvements.

(b) Project Certifications. A certificate from the Lender's inspecting engineer certifying that the Project has been substantially completed in accordance with the Plans and, if Lender requests it, a certificate from the architect, certifying the same thing; and approval of the Project by Lender's staff responsible for reviewing the Project.

(c) Insurance. Policies or satisfactory certificates of insurance for all insurance required under the Loan Documents, including an update endorsement for Lender's title insurance policy for the Loan.

(d) Payment of Costs. Evidence satisfactory to Lender that all sums due in connection with the Project have been paid in full (or will be paid out of the final disbursement) and that no person claims or has a right to claim any lien arising out of the Project or the supplying of labor, material, or services for the Project.

(e) Additional Acts. Any other documents, affidavits, reports, or assurances as Lender or the Title Insurer may require.

## PART EIGHT EVENTS OF DEFAULT AND REMEDIES

### 8.01 Events of Default.

(a) Monetary Default. The occurrence of either one of the following shall constitute a "Monetary Default" under this Agreement:

(i) in all cases except where the applicable fraction (determined under Section 42(c)(1)(b) of the Internal Revenue Code) of a building on the Property, as set forth in the final application that is used to create the Internal Revenue Form 8609, is lower than the percentage of Section 1602 Program funds that comprise the eligible basis of the building (the "Section 1602 Percentage), the applicable fraction of such building falls below the greater of (1) the Section 1602 Percentage or (ii) the minimum set aside elected for the building under Section 42(g)(1) of the Internal Revenue Code; or

(ii) in cases where the applicable fraction of a building on the Property, as set forth in the Lien and Extended Use Agreement, is lower than the Section 1602 Percentage, the applicable fraction falls below the applicable fraction of such building set forth in the Lien and Extended Use Agreement.

(b) Non-Monetary Default. The occurrence of any one or more of the following events shall constitute a Non-Monetary Default under this Agreement.

(i) Breach of Covenant. If Borrower shall fail to perform, observe or comply with any of the terms, covenants, conditions or provisions contained in this

Agreement, the Note, the Application or any other Loan Documents or the Policies and Procedures or QAP, or if any default or event of default occurs under any of the Loan Documents or under the terms of any other mortgage or agreement encumbering the Property.

(ii) Inaccurate Representation. If at any time any representation or warranty made by the Borrower in any of the Loan Documents shall be or become false, misleading, incomplete or incorrect.

(iii) Assignment. If Borrower shall agree to, or execute, any assignment of this Agreement or of any advance hereunder or if the Property and/or Improvements are conveyed or encumbered in any way without the prior written consent of Lender or as otherwise permitted in the Loan Documents.

(iv) Bankruptcy of Borrower. If Borrower shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent.

(v) Involuntary Liens. If a lien, writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Property or other collateral covered by the Loan Documents and such is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy.

(vi) Destruction of Property. If the Property shall be or have been destroyed or, in the reasonable judgment of Lender, materially damaged, and, in the reasonable judgment of Lender, the development of the Property cannot be completed.

(vii) Voluntary Termination. If Borrower requests a termination of the Loan hereunder or confesses inability to continue performance in accordance with this Agreement.

(viii) Failure to Comply with Applicable Laws. If Borrower fails to comply with any law, rule, order, regulation, guidance, policy, procedure or directive issued by a Governmental Authority and applicable to the performance of its obligations hereunder, including, without limitation, the ARRA, and the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*). The enactment or amendment of any state or federal statute or promulgation of regulations thereunder after execution of this Agreement shall be reviewed by Lender and Borrower to determine whether the provisions of this Agreement require formal modification.

(ix) Failure to Fund Accounts. If Borrower fails to (i) fully fund and maintain the Accounts as set forth herein, (ii) use the funds in any Account in accordance with the Loan Documents or the Section 1602 Program, or (iii) obtain any required approval for withdrawals from Lender as set forth herein.

(x) Failure to Operate the Project During the Compliance Period. If Borrower fails to operate the Project during the Compliance Period in accordance with Section 5.01(s).

(c) Notice and Cure. Notwithstanding anything contained herein to the contrary, in the case of a Non-Monetary Default under Section 8.01(b)(i), (ii), (viii), (ix) or (x) Borrower shall have thirty (30) days to cure such Non-Monetary Default following

receipt of written notice of such Non-Monetary Default from Lender; provided, however, that if such cure cannot reasonably be completed within such thirty (30) day period, Borrower shall have an additional sixty (60) days beyond such thirty (30) day cure period so long as Borrower commenced such cure within the thirty (30) day period and diligently pursues it to completion. A Non-Monetary Default which is cured by Borrower in accordance with this provision shall be deemed to have been fully cured and to have not been a Non-Monetary Default for all purposes of this Agreement and the other Loan Documents.

#### 8.02 Remedies.

(a) For Monetary Default. Upon the occurrence of a Monetary Default under this Agreement, the indebtedness evidenced by the Note shall be subject to recapture by Lender in an amount equal to (i) the Original Principal Balance (as such term is defined in the Note), minus (ii) the product of (A) one-fifteenth (1/15) of the Original Principal Balance, multiplied by (B) the number of full years of the Compliance Period which have been completed at the time of the occurrence of the Monetary Default (the "Recapture Amount"). In the event that the Monetary Default occurs after the expiration of the Compliance Period, no Recapture Amount will be subject to recapture by Lender. Borrower understands and agrees that any amount of the Loan which becomes subject to recapture constitutes a debt owed to the United States payable to the General Fund of the Treasury and enforceable by all available means against the assets of the Borrower.

(b) For Non-Monetary Default. Upon the occurrence of a Non-Monetary Default under this Agreement all obligations on the part of Lender to make advances hereunder shall cease and terminate and Lender, at its option, may:

(i) Completion of Development of the Property. Enter into possession of the Property and Improvements and, with or without such entry, take all appropriate steps to secure and protect the Property and other collateral covered by the Loan Documents.

(ii) Cancellation. Cancel the Agreement and terminate funding under the Agreement.

(iii) Disqualification. Disqualify Borrower from awards of funds distributed by Lender in the future.

(iv) Other Remedies. Enforce, or avail itself of any and all remedies provided in any or all of the Loan Documents, or otherwise as provided by the United States Department of the Treasury.

(c) Remedies Cumulative. Except as otherwise limited herein, all powers and remedies given by this Agreement to Lender shall be cumulative and not exclusive of one another or of any other right or remedy or of any other powers and remedies available to Lender, and no delay or omission of Lender to exercise any right or power accruing upon any default occurring shall impair any other or subsequent default or impair any rights or remedies consequent thereto. Every power and remedy given to Lender by this Agreement or by law may be exercised from time to time, and as often as may be deemed expedient.

(d) [Non-Recourse. Notwithstanding anything to the contrary contained herein, in any action or proceeding brought under this Agreement or the indebtedness evidenced by

**the Note, no deficiency or other money judgment shall be enforced against Borrower, the indebtedness evidenced by the Note constituting a nonrecourse obligation, except that foreclosure actions (or similar proceedings) may be maintained. However, any judgment obtained shall be enforced only against the security for the Note or the indebtedness evidenced thereby, provided that nothing contained herein shall be deemed to prejudice the rights of Lender to recover from Borrower all funds, damages or costs (including, without limitation, attorneys' fees) incurred by Lender as a result of fraud or material misrepresentation by or on behalf of Borrower. Notwithstanding the foregoing, Lender shall be permitted to pursue any and all rights and remedies available to it under the Guaranties.] [USE ONLY WHERE THERE IS AN EQUITY INVESTOR]**

8.03 Removal of Manager. In addition to any other rights and remedies of Lender set forth herein, Lender may, at any time during the term of the Loan require Borrower to remove the Manager and appoint a new manager for cause. For purposes of this Section 8.03, "cause" shall include, but not be limited to (i) failure to promptly and competently perform the duties of the Management Agent pursuant to the Management Agreement between the Manager and Borrower; (ii) failure to comply with the record-keeping, tenant qualifications and rental requirements of the Lien and Extended Use Agreement and the Section 1602 Program; or (iii) material mismanagement of the Project

8.04 Attorneys' Fees. Should Lender, at its sole option, elect to employ attorneys at law to represent it in the enforcement of any obligation undertaken by Borrower in favor of Lender, or undertaken by any third person in favor of Borrower in connection herewith, or to participate in any legal proceedings in any way connected herewith, Borrower does hereby agree to pay to Lender the fees and expenses of the foregoing attorneys to the extent allowed by law.

8.05 Waivers. Borrower does hereby expressly waive in favor of Lender and its assigns, to the fullest extent allowed by law, any and all exemptions from seizure provided by any applicable law, rule or regulation of any Governmental Authority. Borrower does hereby also expressly waive any notice of default by Lender in connection with any breach of any obligation undertaken by Borrower in favor of Lender.

## PART NINE ARRA PROVISIONS

9.01 Whistleblower Policy. Borrower shall not discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing (to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, the state or federal regulatory or law enforcement agency, a person with supervisory authority over the employee or other person working for Borrower who has authority to investigate, discover, or terminate misconduct) information that the employee reasonably believes is evidence of:

- (a) gross mismanagement of a contract or grant relating to covered funds;
- (b) gross waste of covered funds;
- (c) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- (d) an abuse of authority relating to the implementation or use of covered funds; or
- (e) a violation of law, rule, or regulation related to a contract (including, without

limitation, the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

For purposes of this Section 9.01, “covered funds” shall mean any contract, grant, or other payment received by any non-federal employer if (i) the Federal Government provides any portion of the money or property that is provided, requested, or demanded; and (ii) at least some of the funds are appropriated or otherwise made available by the ARRA.

9.02 Compliance with Investigations. Borrower shall comply with any and all investigations by the Office of the Inspector General during the term of the Loan, including, without limitation, by providing prompt responses to requests for information and reasonable access to its facilities, records, and personnel. Without limiting or restricting the authority of an inspector general, Borrower shall permit an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.) to (a) examine any records of Borrower that pertain to, and involve transactions relating to, this Agreement, the Loan; and (b) to interview any officer or employee of Borrower regarding such transactions.

9.03 Central Contractor Registration. Borrower shall register with the federal Central Contractor Registration (“CCR”) ([www.ccr.gov](http://www.ccr.gov)) within a reasonable time period following execution of this Agreement, but in no event later than is necessary for Borrower to comply with applicable program and ARRA deadlines.

9.04 One-Time Funding. Funds supporting this Agreement have been provided through the ARRA and are subject to the reporting and operational requirements of ARRA. Lender makes no representations/guarantees about funding beyond the term of the Loan as this is being funded with one time dollars from the ARRA. The recipient of these funds is responsible for record-keeping and reporting requirements under ARRA. Reports required by Federal agencies, Lender and the State of Indiana shall include, but are not limited to, performance indicators of program deliverables, jobs created or retained, information on costs and progress against timelines. Additionally, each grant subject to ARRA, including subcontractors and sub-grantees, is subject to audit by appropriate federal or state entities. Failure to comply with the terms, conditions and requirements of ARRA may result in the recapture of the balance of funds awarded, as more fully set forth herein.

9.05 False Claims Act Reporting. Borrower shall promptly refer to an appropriate inspector general any credible evidence that a principle, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted a false claim as defined in the False Claims Act (31 U.S.C. §§ 3729-3733) or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, or similar misconduct involving any ARRA funds.

## PART TEN MISCELLANEOUS

10.01 No Permanent Waivers. No right conferred on Lender under this Agreement shall be deemed waived unless such waiver is in writing and signed by Lender. No such waiver of the provisions or conditions of this Agreement or of any of the other Loan Documents shall be construed as a waiver of any of the other provisions or conditions hereof or thereof nor shall a waiver of any provision or condition be construed as a right to a subsequent waiver of any other provisions or conditions or be construed as a right to a subsequent waiver of the same provision or condition.

10.02 Indemnification. The Borrower shall indemnify, save and hold harmless the Lender, its directors, officers, employees and agents of and from any and all claims, losses, damages or expenses (including reasonable attorneys' fees) arising out of or in any way related to failure or alleged failure of the Borrower to strictly and timely perform its obligations under this Agreement.

10.03 Severability. Unenforceability for any reason against any person or persons of any provision of this Agreement, or of any of the other Loan Documents between Borrower and Lender, shall not affect the validity of any other provisions of the Loan Documents or any other such agreement, and shall not impair the operation and validity of the same provisions against any other person or persons.

10.04 Governing Law. This Agreement and all the Loan Documents shall be governed by, and construed in accordance with, the laws of the State of Indiana and any and all disputes hereunder shall be litigated in courts located in Marion County in the State of Indiana.

10.05 Time of the Essence. The parties hereto agree that time is of the essence under this Agreement and with respect to all of Borrower's obligations stated herein.

10.06 Assignment of Lender's Interest. It is expressly agreed that any and all terms of this Agreement, the other Loan Documents and all other agreements made or executed by Borrower or others in favor of Lender, and all rights, powers, privileges, options and remedies conferred to Lender herein and therein, shall inure to and be for the benefit of and may be exercised by Lender, its successors and assigns.

10.07 Lender's Relationship to Others. Lender is not a partner or joint venturer in any manner whatsoever with Borrower or any other party with an interest in the Property.

10.08 Borrower's Successors. All obligations contained in this Agreement, the other Loan Documents and all other agreements to be observed, complied with or performed by Borrower shall be binding upon Borrower, and upon its successors and assigns.

10.9 Modifications and Amendments. No modification, consent, amendment or waiver of any provision of this Agreement, nor consent to any departure by Borrower therefrom, shall be effective unless the same is in writing and signed by an authorized officer of Lender and then shall be effective only in the specific instance and for the purpose for which given.

10.10 Notices. All notices pursuant to this Loan Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by certified United States mail, addressed to:

Borrower: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Lender: Indiana Housing and Community Development Authority  
30 S. Meridian Street, Suite 1000  
Indianapolis, IN 46204  
Attention: General Counsel

or at such other place as either party may, by notice in writing, designate as a place for service of notice.

10.11 Authority. The parties represent and warrant, each to the other, that each has all necessary authority to enter into this Agreement, and to engage in all acts necessary to the consummation of this Agreement. The parties further represent and warrant, each to the other, that the signatories hereto have been duly authorized by their respective party and that this Agreement, when executed, shall be the valid and binding act of the party for whom it is signed and enforceable according to its terms.

10.12 Waiver of Jury Trial. **Lender and Borrower, after having had the opportunity to consult with counsel, knowingly, voluntarily and intentionally waive any right they may have to a trial by jury in any litigation based upon or arising out of this Agreement or any related instrument or agreement, or any of the transactions contemplated herein, or any course of conduct, dealing, statements (whether oral or written), or actions by and between Lender and Borrower. Lender and Borrower shall not seek to consolidate by counterclaim or otherwise, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.**

*(Remainder of page intentionally left blank.)*

### NON-COLLUSION AND ACCEPTANCE

The undersigned attests, subject to the penalties for perjury that he/she is the properly authorized representative, agent, member or officer of Borrower, as applicable that he/she has not, nor has any other member, employee, representative, agent or officer of Borrower, as applicable, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

IN WITNESS WHEREOF, Lender and Borrower, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

LENDER:

**INDIANA HOUSING AND COMMUNITY DEVELOPMENT  
AUTHORITY,**  
as administrator of the Section 1602 Program

By: \_\_\_\_\_  
Sherry Seiwert, Executive Director

BORROWER:

**«GI\_Grantee»,**  
organized and existing under the laws of the State of Indiana

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

1468042\_8; BME; 09/29/09



**EXHIBIT A**

*Loan Agreement*  
\_\_\_\_\_ *and Indiana Housing and Community Development Authority*

LEGAL DESCRIPTION